

1 ever showed up in a position description or was assigned as a
2 specific duty, I think my response in the deposition was
3 correct. I don't recall such a specific instruction to, to
4 any individual. But I recognize that those are the kinds of
5 things that are part of our attention to FCC rules and
6 regulations and the overall responsibilities were assigned to
7 certain individuals at the station.

8 Q And who were those individuals?

9 A The general manager or general managers, director of
10 broadcast ministries.

11 Q And during the time when there -- when the position
12 of general manager was vacant, whose responsibility was that?

13 A As I think I said earlier, the organizational
14 structure would suggest that the responsibility moves up the
15 line, but that was often shared with the operations director
16 at the radio station who was
17 Mr. Dennis Stortz.

18 MR. HONIG: Your Honor, I intend to move to another
19 area but before doing so so that, that those writing findings
20 can understand what this is about, may I read that question
21 and answer in the deposition into the record?

22 JUDGE STEINBERG: Let me ask is it your contention
23 that the answer today is, is different than it was during the
24 deposition and that such material may be used for impeachment
25 purposes?

1 MR. HONIG: Different may be too strong a word. It
2 certainly is, is a modification of the response.

3 JUDGE STEINBERG: Any objection?

4 MS. SCHMELTZER: Well, I think he explained the --

5 JUDGE STEINBERG: Let's read, let's read the
6 question and answer in and then it'll all be there and --

7 MS. SCHMELTZER: I mean, unfortunately, Your Honor,
8 then we're taking it out of context.

9 JUDGE STEINBERG: Well, after -- why don't we go off
10 the record and see if counsel can agree on the entire portion
11 to be read into the record. Rather than have Mr. Honig read
12 one portion and then, and then Ms. Schmeltzer read another
13 portion in which may come before it or after it, we'll get the
14 whole section read in the order in which it occurred and that
15 would make the most sense. So, let's go off the record while
16 that's being done.

17 (Whereupon, off the record.)

18 (Whereupon, on the record.)

19 JUDGE STEINBERG: Let me describe what occurred off
20 the record. I asked the -- I asked counsel to try to agree on
21 a section of the deposition which will be read into the record
22 to explain what was used to refresh Reverend Devantier's
23 recollection. I'm -- we've been doing this for several
24 minutes. I'm tired of waiting. Reverend Devantier was asked
25 to look at and he did look at deposition transcript page 69,

1 | lines 21 through 24. Mr. Honig will read this into the record
2 | at this point in time after which I will give Mrs. Schmeltzer
3 | an opportunity to read whatever section she wants to read into
4 | the transcript. Okay. Mr. Honig, read page 69, lines 21
5 | through 24 into the record and I don't have the deposition so
6 | somebody check and I'll ask when he's finished if that's what
7 | the transcript says.

8 | MR. HONIG: Question: "Was it a, was it a job
9 | responsibility of any person at KFUD to take note of the
10 | presence or absence of minority applicants for employment?"

11 | Answer: "No."

12 | JUDGE STEINBERG: Okay. Mrs. Schmeltzer, is there a
13 | section of the deposition transcript which you would like to
14 | read into the record?

15 | MS. SCHMELTZER: Yes. Yes. Beginning --

16 | JUDGE STEINBERG: Okay. Please identify it and do
17 | so now.

18 | MS. SCHMELTZER: Beginning on page 69, line 16 and
19 | I'm going to read through page 70, line 10. Beginning with
20 | line 16, Question: "Now, whose -- was it someone's job to
21 | make note of the presence or absence of such applicants,
22 | meaning minority applicants?" Answer: "I'm not --"
23 | Question: "You don't understand?" Answer: "Sure, I
24 | understand that." Question: "Was it a, was it a job
25 | responsibility of any person at KFUD to take note of the

1 presence or absence of minority applicants for employment?"

2 Answer: "No." Question: "Okay. Did you ever ask a general
3 manager of the stations during the license term whether there
4 had been any black or minority applicants for employment?"

5 Answer: "Did I ask them if there had been?" Question:

6 "Yes." Answer: "It was on the subject of minority applicants
7 and minority employees, there was something discussed with
8 managers on a somewhat regular basis." Question: "Did you
9 ever ask a general manager have there been any minority
10 applicants?" Answer: "Yes."

11 JUDGE STEINBERG: Thank you. Next question. Not
12 from the deposition. From your head. Thank you.

13 MR. HONIG: All right. Hold on. What line did we
14 end on?

15 JUDGE STEINBERG: 70, line 10.

16 BY MR. HONIG:

17 Q Line 10. Did you ever ask Emil Wilde whether there
18 had been black or minority applicants at the stations during
19 the license term?

20 MS. SCHMELTZER: You know, Your Honor, if this is
21 going to be a memory test I object.

22 JUDGE STEINBERG: Where is this going?

23 MR. HONIG: I'm, I'm going to ask
24 whether -- the last matter read in the record was that there
25 were conversations with managers. There were six managers. I

1 would like to ask --

2 JUDGE STEINBERG: Okay. Okay. Wait a minute, wait
3 a minute, wait a minute. When -- let's get away from the
4 deposition for a moment. Reverend Devantier was asked a
5 question by you, he gave an answer.

6 MR. HONIG: Yes.

7 JUDGE STEINBERG: You refreshed his recollection by
8 using the deposition.

9 MR. HONIG: Right.

10 JUDGE STEINBERG: I let you read into the record the
11 portion of the deposition, Mrs. Schmeltzer read into the
12 record a portion of the deposition. Now let's get on with a
13 new separate question. The rules provide that depositions in
14 an FCC proceeding can be used for any purpose. The purpose
15 for -- you used it for one purpose. However, the opposing
16 parties have the right to put into the transcript other
17 portions of the deposition. Now Mrs. Schmeltzer has done
18 that. This particular use of the deposition is now over so
19 you will now move to a different question. If you would like
20 to ask the witness did you talk about this with general
21 managers, I mean, his testimony today --

22 MR. HONIG: Yeah.

23 JUDGE STEINBERG: -- and then say who they were, who
24 were they, then, then we can see where we go from there. But
25 the way I, the way I read it was you were just -- you wanted

1 to read through page 75 basically. You know, this was, this
2 was not on the record. This was on the off-the-record
3 discussion because there was a lot of follow-up and a big
4 colloquy and that's when things -- when the discussion
5 basically -- when I ended the discussion and went back on the
6 record. So, why don't you start again. Now, these are, these
7 are brand new questions. If you get inconsistent answers then
8 you can go back to the deposition I guess. I mean --

9 BY MR. HONIG:

10 Q Okay. Who were the general managers with whom you
11 had discussions about black and minority applicants during the
12 license term?

13 A It's the kind of subject matter that would have come
14 up in conversations with all of those serving as general
15 manager at KFUEO. During the period from '86 through '87 there
16 were two individuals who assumed some responsibility at the
17 radio station to assist in the operation. They were both
18 members of the standing committee on broadcast but Dennis
19 Stortz was the, the one most involved in the day-to-day
20 operation from '86 to '87. Following that, Mr. Ken Lombardi,
21 director of broadcast ministries. Under him, Tom Lauher as FM
22 general manager. And at the very end of the license period,
23 Reverend David Schultz as AM general manager.

24 Q Now, Reverend Devantier, you recall we've had
25 testimony concerning various pleading and letters filed by

1 Arnold & Porter between February 1990 and the time when this
2 case was designated for hearing in February 1994. When I say
3 filed, I mean filed with the FCC. And what I would like to do
4 is show you those pleadings and letters and ask whether for
5 each one you reviewed and approved it before it was filed and
6 they're all in the record already. The first of them is in
7 Mr. Stortz's testimony, Tab 7.

8 MS. SCHMELTZER: Your Honor, this was introduced as
9 part of our exhibit for a limited purpose and that was a
10 footnote.

11 MR. HONIG: Your Honor, this can be used for all
12 purposes.

13 JUDGE STEINBERG: Of course.

14 MS. SCHMELTZER: This is Church Exhibit 4,
15 Attachment 7?

16 MR. HONIG: Yes.

17 JUDGE STEINBERG: When, when you review the
18 documents, Reverend Devantier, take your time and take
19 whatever time you need to become familiar with what they are.
20 We can go off the record.

21 (Whereupon, off the record.)

22 (Whereupon, on the record.)

23 JUDGE STEINBERG: Reverend Devantier has completed
24 his review of Church Exhibit 4, Attachment 7 and you question,
25 Mr. Honig.

1 BY MR. HONIG:

2 Q My question is, did you review and approve this
3 pleading before it was filed?

4 A I do not recall that specific process. I do recall
5 seeing it.

6 Q Before it was filed?

7 A To the best of my recollection.

8 Q Okay. Now, the next one -- the, the other ones are
9 all in the Bureau --

10 MR. HONIG: Do you have the Bureau's binder there?

11 JUDGE STEINBERG: Yeah, the, the other binder. And
12 if you'd look at Mass Media Bureau Exhibit No. 9. Okay. You
13 got that now?

14 WITNESS: Um-hum.

15 JUDGE STEINBERG: Okay. Please review it. Okay.
16 He's completed his review.

17 BY MR. HONIG:

18 Q Now, for question 9 -- for -- I'm sorry, for, for
19 Bureau Exhibit 9, did you review and approve this document
20 before it was filed with the FCC?

21 A I do not recall that I did.

22 Q Did you see it before it was filed with the FCC?

23 A I do not recall.

24 Q Okay. The next one is Bureau Exhibit 11.

25 A I do recall seeing this in the course of preparation

1 for this hearing but I do not recall reviewing it and
2 approving it before it was submitted.

3 Q Or seeing it before it was submitted?

4 A I do not recall.

5 Q Okay. The next one is Bureau Exhibit 12.

6 A I do not recall seeing this.

7 Q The next one is, is Bureau Exhibit 14. It's long so
8 take your time.

9 A Well, I do recall seeing it, reviewing it and
10 affixing an affidavit to it.

11 Q And that affidavit is page 46 of the exhibits is it
12 not?

13 A Yes, that is correct.

14 Q Okay, and was there anything in -- can you point to
15 anything in Bureau Exhibit 14 which was filed over your
16 objection, with which you disagreed but it was filed anyway?

17 MS. SCHMELTZER: Well, Your Honor, I just think
18 that's an unfair question. This is a very lengthy exhibit.

19 MR. HONIG: The witness swore a declaration.

20 JUDGE STEINBERG: Wait, wait, wait. Look at page
21 46, your affidavit, at paragraph 4. Did you read that?

22 WITNESS: Yes.

23 JUDGE STEINBERG: Did you do that before you signed
24 the affidavit?

25 WITNESS: Yes.

1 MR. HONIG: My question doesn't go to whether the
2 facts are true, but whether the witness agreed with the
3 arguments when they were made.

4 MS. SCHMELTZER: Objection.

5 JUDGE STEINBERG: Why -- these, these were --this
6 was a document that was filed with the Commission and
7 represents the position -- the official position of KFUD with
8 respect to whatever it says in here and I don't think it's,
9 it's -- I'm not going to say relevant but whether, whether he
10 personally -- basically, whether he is agreeing or disagreeing
11 with the legal argument?

12 MR. HONIG: Yes.

13 MS. SCHMELTZER: Your Honor --

14 MR. HONIG: It's a central question in the case
15 because of statements that have been made in some of the
16 testimony.

17 JUDGE STEINBERG: I'll tell you what we'll do. Your
18 question is too broad. Point to specific language. You have
19 to have something in mind.

20 MR. HONIG: Okay.

21 JUDGE STEINBERG: And point to specific language and
22 ask him if he agrees, disagrees or has no position. I mean,
23 people hire lawyers to do certain things and they rely on the
24 judgment of their lawyers. Isn't that, isn't that right,
25 Reverend Devantier?

1 WITNESS: It certainly is.

2 JUDGE STEINBERG: And -- well, I'm going to leave it
3 there.

4 BY MR. HONIG:

5 Q All right. Let's start with page 14.

6 JUDGE STEINBERG: You're talking about the
7 handwritten numbers, correct?

8 BY MR. HONIG:

9 Q Yes. The paragraph that starts at the bottom of
10 page 14 and runs to the -- and concludes on page 15.

11 A Just that one paragraph?

12 Q Yes.

13 A And the question is?

14 Q Did you --

15 MS. SCHMELTZER: Which -- I don't know whether
16 the --

17 JUDGE STEINBERG: Okay. Let's start again.
18 Page -- handwritten page -- handwritten number 14, the
19 paragraph which -- the last paragraph it begins, "KFUO-FM is
20 the only full-time..." and ends at the top of page 13 through
21 the end. Is that correct, Mr. Honig?

22 MR. HONIG: Yes.

23 JUDGE STEINBERG: I think before you -- after
24 Reverend Devantier reviews it I think you should ask him if in
25 his opinion this is factual or legal or a little bit of both.

1 BY MR. HONIG:

2 Q I agree, I agree. That's a good -- okay, have you
3 reviewed it?

4 A Um-hum.

5 JUDGE STEINBERG: Okay. That's a yes.

6 WITNESS: Yes. Sorry.

7 BY MR. HONIG:

8 Q Now, did KFUO intend this paragraph to be a
9 statement of fact or a statement of law or some of both?

10 MS. SCHMELTZER: I'm not sure the witness
11 understands the distinction between a fact of law to be
12 perfectly honest.

13 JUDGE STEINBERG: Do you? If you don't say you
14 don't.

15 WITNESS: Well, if you're talking about verifying
16 the, the figures, the numbers, the one-third and the
17 statistics and that sort of thing, I'm not sure that I -- if
18 it's a legal argument, it simply expresses the point of view
19 of the individual making the expression

20 JUDGE STEINBERG: Then the next question is I guess,
21 which is where we started, is there anything in here that was
22 said over your objection?

23 WITNESS: That's right. No.

24 JUDGE STEINBERG: I think that's the better way to
25 put it. We won't -- law with facts and --

1 BY MR. HONIG:

2 Q On page 44, the first paragraph on that page --

3 JUDGE STEINBERG: Beginning "KFU urges the
4 Commission..."?

5 MR. HONIG: Yes.

6 JUDGE STEINBERG: And the question?

7 BY MR. HONIG:

8 Q My question is, first, is this a statement of fact,
9 law or some of both?

10 MS. SCHMELTZER: Objection again, Your Honor, for
11 the same reason.

12 JUDGE STEINBERG: Okay. Let's -- yeah, let's --
13 that wasn't really helpful the last time. There, there is a
14 clause and, and a portion of a sentence in here which I think
15 are absolutely clearly legal and not factual.

16 MR. HONIG: You're right.

17 JUDGE STEINBERG: And I'll, I'll state them -- well,
18 I won't state them but the question is, is there anything in
19 here that was stated over Reverend Devantier's objection?

20 MR. HONIG: Yes.

21 JUDGE STEINBERG: Can you -- do you think you can
22 answer the question?

23 WITNESS: Yes. At the time, no.

24 JUDGE STEINBERG: Now, now I'm going to get a little
25 -- the, the clause -- the fourth line down, "And were thus

1 exempt from EEO requirements..." do you see that? You need to
2 answer. Yes, you do see that?

3 WITNESS: Yes.

4 JUDGE STEINBERG: That to me looks like a legal
5 conclusion. Does that look to Reverend Devantier like a legal
6 conclusion?

7 WITNESS: Yes, it does.

8 JUDGE STEINBERG: Okay. So, let's forget that.

9 MR. HONIG: I don't care about that.

10 JUDGE STEINBERG: Okay. How about the last -- after
11 the last semicolon? That looks like legal argument to me too.
12 Well, actually, there's a blend in this whole paragraph but --

13 MS. SCHMELTZER: That's the problem.

14 JUDGE STEINBERG: Yeah, that's the problem. But
15 anyway, there was nothing in here of a factual nature that you
16 disagreed with? You can read it again if you like.

17 WITNESS: Yes, I think it's, it's true to say that
18 at the time understanding the source of the document and
19 understanding that it was prepared by our legal counsel in
20 whom we had some confidence to know about such things, I had
21 no objection.

22 BY MR. HONIG:

23 Q Okay. The next document I'd like you to look at is
24 Bureau Exhibit 15. You know what --

25 JUDGE STEINBERG: Pages are out of order anyway.

1 MR. HONIG: Yeah. No, that's --

2 JUDGE STEINBERG: That was Mr. Stortz's document.

3 MR. HONIG: 15 is, is in the nature of -- and we've
4 already gone through in discovery what it is and I'm satisfied
5 so strike the question.

6 JUDGE STEINBERG: Can we agree to put the pages in
7 order? Okay. So, let's mark page 3 will become page 2 and
8 let's mark page 2 to become page 3 of Exhibit 15 or do you
9 want to just leave it the way it is?

10 MR. HONIG: No, let's -- actually, Devantier's is
11 first, so 4 is -- 4 becomes 3, 3 becomes 2 and 2 becomes 4.

12 MS. SCHMELTZER: 2 becomes 4?

13 MR. HONIG: Yeah.

14 MS. SCHMELTZER: All right.

15 JUDGE STEINBERG: Okay, 1 is still 1, the
16 handwritten number 2 becomes what?

17 MR. HONIG: 4.

18 JUDGE STEINBERG: Handwritten number 3 becomes?

19 MR. HONIG: 2.

20 JUDGE STEINBERG: And handwritten number 4 becomes?

21 MR. HONIG: 3.

22 JUDGE STEINBERG: Thank you.

23 MR. HONIG: Someone played 52 pick-up.

24 JUDGE STEINBERG: Maybe someone graded these pages.
25 Threw them up the stairs and put them in the order in which

1 | came down.

2 | MR. HONIG: I'm not teaching anymore. I'm regaining
3 | my sanity. Can we go off the record for a second?

4 | (Whereupon, off the record.)

5 | (Whereupon, on the record.)

6 | JUDGE STEINBERG: Back on the record. Mr. Honig,
7 | you want to offer NAACP No. 22 or, or do you want to withdraw
8 | it? I don't --

9 | MR. HONIG: Actually, I think I would like to offer
10 | it insofar as the information on when the general managers
11 | served which is on page 4, unless someone can point it to me I
12 | don't know that those date and that time sequence are
13 | somewhere else plainly in the record. I may be wrong.

14 | MS. SCHMELTZER: That's fine, that's fine, Your
15 | Honor, we don't have any objection to that.

16 | JUDGE STEINBERG: Okay.

17 | MS. SCHMELTZER: I don't know that all of that
18 | information -- well, I guess let me put it this way. Yeah, I
19 | think we could just read this in. I mean I don't know why
20 | their phone numbers have to go in the record.

21 | MR. HONIG: I'm not going to rely on the phone
22 | numbers in findings.

23 | MS. SCHMELTZER: This is not all the general
24 | managers. Can we reach a stipulation on this? I've got all
25 | the dates.

1 JUDGE STEINBERG: Okay. Work on it. That's a good
2 idea. You want in the record all the general managers --
3 MR. HONIG: And the dates.
4 JUDGE STEINBERG: -- and the license term and the
5 dates?
6 MS. SCHMELTZER: Sure.
7 JUDGE STEINBERG: Acting also?
8 MR. HONIG: Yes.
9 JUDGE STEINBERG: Okay.
10 MR. HONIG: Can, can we just do a joint exhibit that
11 would have the general managers and the dates and stipulated
12 --
13 JUDGE STEINBERG: Absolutely. I'll add that to my
14 list.
15 MR. HONIG: Okay. So, that'll be Joint Exhibit 2.
16 MS. SCHMELTZER: I've got it somewhere.
17 JUDGE STEINBERG: We don't have, we don't have Joint
18 Exhibit 1. Yes, okay, okay.
19 MS. SCHMELTZER: That's going to be the Reed Miller
20 deposition. In fact, we can -- we'll have to do it tonight I
21 guess.
22 JUDGE STEINBERG: Okay.
23 MR. HONIG: Yeah. Okay. Well --
24 JUDGE STEINBERG: And so do you want to withdraw 22?
25 MR. HONIG: I'll withdraw 22.

1 JUDGE STEINBERG: Okay. NAACP No. 22 is withdrawn.
2 (Whereupon, the document referred to
3 as NAACP Exhibit No. 22 is hereby
4 withdrawn.)

5 MR. HONIG: Okay. 23 is offered.

6 JUDGE STEINBERG: Wait, wait just a second, please.
7 I'm --

8 MR. HONIG: Sure. Much of the information that will
9 be stipulated in is in number 23 and let's see if there's
10 anything else.

11 JUDGE STEINBERG: As far as 23 goes, the only thing
12 you're interested in is in the general managers?

13 MS. SCHMELTZER: Actually, I think -- let's see, I
14 think the general managers are listed in 23. The only -- you
15 want to do that?

16 MR. GOTTFRIED: If you stipulate in the answer to
17 interrogatory 11.

18 MS. SCHMELTZER: The answer to --

19 MR. HONIG: The only thing is, it doesn't have the
20 month. It just has the years and sometimes in reviewing these
21 documents the months are going to be important.

22 JUDGE STEINBERG: Well, let's, let's just do the
23 stipulation.

24 MR. HONIG: Yeah. If we're going to do the
25 stipulation then the stipulation will have some -- the best,

1 best evidence as to months or the days --

2 MS. SCHMELTZER: Okay.

3 MR. HONIG: -- then, the I'll withdraw 23 also.

4 MS. SCHMELTZER: I can do -- I think I can do mostly
5 -- I mean months in most cases.

6 JUDGE STEINBERG: To the extent you can. I mean, if
7 you can't you can't. So, 23 is withdrawn, Mr. Honig?

8 MR. HONIG: Yes, subject to that understanding.

9 JUDGE STEINBERG: Okay. Exhibit -- NAACP Exhibit 23
10 is withdrawn.

11 (Whereupon, the document referred to
12 as NAACP Exhibit No. 23 is hereby
13 withdrawn.)

14 JUDGE STEINBERG: Now, what was the next number?

15 MR. HONIG: 29.

16 MS. SCHMELTZER: I would just like to ask the
17 purpose of NAACP Exhibit 29.

18 MR. HONIG: Actually, this is just the material
19 which wasn't in the historical materials that Reverend Bohlman
20 I guess attached but that did relate -- that did seem to date
21 pretty clearly when the training relationship between KFUD and
22 Concordia Seminary began and the nature of it and the program
23 of training and the interplay between the seminary and the,
24 the relations that led to it.

25 MS. SCHMELTZER: This exhibit should have been

1 introduced through Reverend Bohlman. He would have been the
2 appropriate person to sponsor this.

3 MS. LADEN: Your Honor, I want to point out I'm not
4 sure, it appears that the positions that are talked about here
5 are nonpaid.

6 MR. HONIG: They originally were and then later they
7 became paid.

8 MS. LADEN: Well, this list --

9 MR. HONIG: This is the same program and it was in
10 the same block of documents from which the Reverend Bohlman
11 materials -- I understood that these were materials which
12 either Reverend Bohlman or this witness was familiar, that is,
13 the history of the seminary.

14 MR. ZAUNER: Your Honor, this part of it, at least
15 the first letter, talks about nonpaid positions. I don't
16 think it's relevant. It's also hearsay because it's not
17 written by this witness or received by this witness.

18 MR. HONIG: The witness has described the --

19 JUDGE STEINBERG: If it's -- I've allowed you a lot
20 of leeway in putting background information in and I think
21 that Mr. Honig should be afforded the
22 same --

23 MS. SCHMELTZER: Well, if it, if it comes in by way
24 of background, but I don't think that we can make a conclusion
25 as to what this, this particular radio/TV student training

1 program was.

2 JUDGE STEINBERG: Is this background, Mr. Honig?

3 MR. HONIG: Well, what I'd like to do is move it in
4 for all purposes and then if you need to rule that it only
5 comes in as background then at least it's in the record and
6 the reviewing body will know what I'm talking about.

7 MS. SCHMELTZER: The difference between our exhibits
8 and this one is that we have a sponsor for our exhibits.
9 There's no sponsor.

10 JUDGE STEINBERG: You had someone, you had someone
11 that questions could be asked of.

12 MS. SCHMELTZER: That's right.

13 MR. HONIG: Well, I can ask this witness questions
14 about it.

15 JUDGE STEINBERG: Why don't you -- okay, why you put
16 the document in front of him and ask him questions --

17 MR. HONIG: Okay.

18 JUDGE STEINBERG: -- to his familiarity with the
19 document and/or the program that the document speaks about.

20 MR. HONIG: Okay.

21 MS. SCHMELTZER: Actually, I can --

22 MR. HONIG: You want --

23 MS. SCHMELTZER: I'll --

24 MR. HONIG: All right.

25 JUDGE STEINBERG: Take your time reading it. We can

1 go off the record while Reverend Devantier reads it.

2 (Whereupon, off the record.)

3 (Whereupon, on the record.)

4 JUDGE STEINBERG: Reverend Devantier, have you
5 completed your review of NAACP No. 29?

6 WITNESS: Yes, and just to say that I recall seeing
7 it this week as part of the exhibits but have not seen it any
8 time prior to that.

9 BY MR. HONIG:

10 Q You recognize these from your experience with the
11 church and church documents as genuine church documents?

12 MS. SCHMELTZER: Objection, Your Honor. The witness
13 just said he never saw these until this week.

14 MR. HONIG: I know. I'm asking him now to assess
15 the documents based on his experience about which he's
16 testified and, and provide an opinion as to their genuineness.

17 MS. SCHMELTZER: I don't see how this witness can do
18 that.

19 MR. HONIG: Well, they're taken from the station's
20 files. The witness may well be able to give an opinion.

21 JUDGE STEINBERG: Do you have an opinion as to
22 whether or not -- well, his opinion -- he's not an expert
23 whether or not these are genuine or not, Mr. --

24 MS. SCHMELTZER: I mean, the point is he couldn't be
25 questioned on them in any event since he wasn't familiar with

1 | them.

2 | JUDGE STEINBERG: I mean, also --

3 | MR. HONIG: Well, they speak for themselves. I
4 | don't have any questions about them other than just to
5 | recognize these are church documents and then I'd like to move
6 | them in for what they say.

7 | MS. LADEN: Your Honor, I don't see how we can
8 | recognize that these are church documents if the witness -- if
9 | there's no witness here who's familiar with them.

10 | JUDGE STEINBERG: That's true.

11 | MR. HONIG: But maybe this witness is familiar. I
12 | ought to be able to ask him.

13 | MS. SCHMELTZER: He just answered that question.

14 | JUDGE STEINBERG: He just said he wasn't.

15 | MR. HONIG: No, he said he hadn't seen them.

16 | JUDGE STEINBERG: Are you -- you said you didn't see
17 | them until you reviewed the exhibit exchange. Is that
18 | correct?

19 | WITNESS: That's correct.

20 | JUDGE STEINBERG: Okay. So, you haven't seen them.
21 | That's one question. The second question is are you familiar
22 | with them?

23 | WITNESS: No, I am not.

24 | JUDGE STEINBERG: So, he's not familiar with them.

25 | So, he's neither seen them nor he's -- nor is he familiar with

1 | them.

2 | BY MR. HONIG:

3 | Q And these weren't drawn from your files?

4 | JUDGE STEINBERG: His personal files?

5 | MR. HONIG: Yes.

6 | WITNESS: No, they were not.

7 | BY MR. HONIG:

8 | Q Do you know how they came to be produced to the
9 | NAACP?

10 | MS. SCHMELTZER: Your Honor, I object. I think
11 | we're getting into peripheral --

12 | JUDGE STEINBERG: Does counsel know where they came
13 | -- whose files they came from?

14 | MR. GOTTFRIED: No. I mean, they came from the
15 | station's files. Certainly not from Reverend Devantier's
16 | personal files.

17 | JUDGE STEINBERG: Okay. They came from the -- you
18 | can accept that as, as a representation to counsel they came
19 | from "the stations"?

20 | MR. HONIG: Your Honor, I think that's good enough.
21 | They came from the stations' files, they ought to be -- and
22 | then they can be -- if they're not then they can be presumed
23 | not to be a forgery then they ought to be moved into
24 | evidence.

25 | MS. SCHMELTZER: But, Your Honor, there's no one to

1 question about these.

2 MS. LADEN: The other problem I have is we don't
3 know whether this was ever adopted because we can't ask either
4 the author or the recipient. This could be a draft, this
5 could be anything.

6 MR. HONIG: Well, then let me just speak to pages 3
7 and 5 which have signatures, and 5 is on Concordia Seminary
8 stationery.

9 MS. SCHMELTZER: I still maintain that, that
10 Reverend Bohlman should have been asked about these documents.
11 We had a witness here who might have been able to speak to
12 them and I just don't think it's fair.

13 MR. HONIG: Your Honor, I don't see where the
14 prejudice is. This is so hypertechnical. These are routine
15 documents obviously from Concordia Seminary that were in the
16 stations' files that say what they say. I don't think it's
17 worth a lot of time, they should just come in and let's move
18 on.

19 JUDGE STEINBERG: Well, I see merit to both
20 positions and I'm going to err in favor of letting them in
21 and for background only. And if findings are based on these
22 particular documents you can reply that there wasn't any
23 witness to sponsor them, we don't know whether the program was
24 ever initiated, we don't know this, we don't know that, we
25 don't know -- but also I think -- well, I'm not going to -- I